

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 6634) CASE CLOSURE UNDER THE
6 Forbes for Congress) ENFORCEMENT PRIORITY
7 and Cheryl L. Freauuff as treasurer) SYSTEM¹
8 Republican Party of Virginia, Inc.)
9 and Robert S. Fitzsimmonds III as treasurer)
10 Various 4th District of Virginia Republican)
11 Party Committees)

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13 **GENERAL COUNSEL'S REPORT**

14 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
15 basis to allocate its resources and decide which matters to pursue. These criteria include, without
16 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
17 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
18 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
19 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
20 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
21 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
22 discretion to dismiss cases under certain circumstances or, where the record indicates that no
23 violation of the Act has occurred, to make no reason to believe findings. The Office of General
24 Counsel has determined that MUR 6634 should not be referred to the Alternative Dispute Resolution
25 Office. For the reasons set forth below, the Office of General Counsel recommends that the
26 Commission find no reason to believe that the respondents violated the Act or Commission
27 regulations with regard to the allegations in MUR 6634.

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1 The EPS rating information is as follows: . Complaint Filed: August 29, 2012. Forbes for
Congress Response Filed: September 28, 2012. Republican Party of Virginia Response Filed: October 23, 2012.

1 In this matter, the Complainant, Roberta M. "Bonnie" Girard, alleges that Forbes for
2 Congress and Cheryl L. Freau in her official capacity as treasurer (the "Committee")², the
3 Republican Party of Virginia, Inc. and Robert S. Fitzsimmonds III in his official capacity as
4 treasurer ("RPV"), and various 4th District of Virginia Republican Party Committees, (collectively,
5 the "Respondents"), violated 2 U.S.C. § 434(b) by failing to disclose in-kind contributions and
6 expenditures related to a phone system allegedly purchased by the Committee and donated to RPV
7 and its local committees for use prior to Virginia's 2012 primary election. Compl. at 1.

8 Specifically, the Complainant alleges that the Committee disclosed two disbursements in
9 April 2012 to Innovative Campaign Strategies for a phone system, and that the Committee then
10 "donated" the system's hardware, software, and "voter data" to RPV and its local district
11 committees. *Id.* at 2-3. The Complainant asserts that the Respondents did not disclose this activity
12 as in-kind contributions and that this activity created a system "by which the Republican Party
13 Committees . . . could identify and target voters" during the Federal Election Activity ("FEA")
14 period 120 days prior to the June 12, 2012, primary election. *Id.*

15 The Complainant appears to base her assertions on comments she alleges to have heard at a
16 meeting of the Colonial Heights (Virginia) Republican Committee ("CHRC") on April 23, 2012.
17 During the meeting, the Complainant alleges that Amanda Chase, Political Director of Forbes for
18 Congress, announced that the Forbes campaign was "donating a phone system" to CHRC and stated
19 that it was "not for Congressman Forbes' campaign. This is for the Party to use . . ." *Id.* at 3, 4.

20 In its Response, the Committee states that no in-kind activity took place between the
21 Respondents, and that "the phones have been and continue to be exclusively used by the [Forbes]
22 Committee for purposes of the Forbes for Congress campaign and are used solely at the Forbes for

² Forbes for Congress is the principal campaign committee of Congressman J. Randy Forbes.

1 Congress campaign properties.” Forbes Resp. at 2. The Committee asserts that the phone system
2 “was never donated to or borrowed by the Republican Party of Virginia or any other GOP
3 committee,” and that none of the calling programs advocated for any candidate other than
4 Congressman Forbes.³ *Id.* The Forbes Response includes a sworn affidavit from Amanda Chase,
5 who states that, during the aforementioned CHRC meeting, she “spoke . . . about a new phone system
6 that had been acquired by the Forbes campaign for use by volunteers during the 2012 election,” and
7 that the “sole use of the phone system has been for the Forbes campaign and not for any other
8 purpose.” *Id.* at Ex. 3.

9 The RPV Response states that the Forbes campaign did not donate a phone or calling system
10 to any Republican Party committee, and that the Complainant may have “confused” a discussion of
11 the Forbes phone system with that of the Republican Party. RPV Resp. at 1. RPV further states that
12 both the Forbes campaign and RPV had their own separate phone calling programs in place, and that
13 the Forbes Committee “operated its own call program with its own telephones.”⁴ *Id.* at 2. Attached
14 to the RPV Response is a sworn declaration from William Flanagan, a member of CHRC who
15 purportedly was in attendance at the April 23, 2012, meeting. Flanagan declares that he recalls that
16 Amanda Chase announced that the Forbes campaign “welcomed volunteers to come to the Forbes
17 campaign headquarters . . . to make telephone calls on behalf of Randy Forbes on a telephone system
18 the Forbes campaign had established.” Flanagan Decl. at 1. Flanagan also attests that he has “no
19 recollection of Ms. Chase committing to provide a telephone system to Colonial Heights Republican
20 Committee, or any other Republican Party committee, for party use.” *Id.* RPV further states that

³ The Forbes Response included telephone scripts that the Committee attests were used by volunteers and were related exclusively to supporting Randy Forbes’ reelection. Forbes Resp. at Ex. 4-6.

⁴ RPV explains that the Committee invited “Party” members to come to the Committee’s headquarters as volunteers to make pro-Forbes calls, but did not turn over the telephone system to the Respondents. RPV Resp. at 2. Separately, “Party members participated in a volunteer program to identify voters using telephones provided by the Republican Party of Virginia.” *Id.*

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1 “[o]n information and belief, the Forbes campaign” did not donate or provide any telephone system to
2 CHRC “or any other Republican Party committee for its own use.” RPV Resp. at 1-2.

3 Political committees are required to report in-kind gifts of anything of value, including
4 disbursements made to other political committees. *See* 2 U.S.C. §§ 431(9)(A)(i), 434(b)(4);
5 11 C.F.R. §§ 100.111(a), 100.111(e)(1), 104.3(b). According to disclosure reports filed with the
6 Commission, the Committee disclosed disbursements to Innovative Campaign Strategies in April
7 2012, for “phone system for calling” and for “leasing phones for calling,” and made additional
8 disbursements to Innovative Campaign Strategies throughout 2012.⁵ The available information
9 suggests that the Committee acquired and used its own telephone system in April 2012, and did not
10 make an in-kind gift of its phone system, or provide for its use by other entities, including the
11 Colonial Heights Republican Committee or any other Republican Party committee. The Committee
12 and RPV both state that the Committee maintained exclusive use of its own telephone system.
13 Additionally, the sworn affidavit from Amanda Chase and declaration from William Flanagan
14 support the Respondents’ claim that the Complainant’s allegation that Ms. Chase’s announcement of
15 a “donation” of a phone system from the Forbes Committee was possibly misinterpreted.

16 Accordingly, the Office of General Counsel recommends that the Commission find no reason
17 to believe that the Respondents violated the Act or Commission regulations. Further, the Office of
18 General Counsel recommends that the Commission approve the attached Factual and Legal Analysis
19 and the appropriate letters, and close the file as to all Respondents.

⁵ The Committee reported disbursements to Innovative Campaign Strategies on April 5, 2012, in the amount of \$4,215.00 for “phone system for calling,” and on April 27, 2012, in the amount of \$2,106.67 for “leasing phones for calling.” *See* Forbes for Congress 2012 12-Day Pre-Primary Report of Receipts and Disbursements at 93. The Committee reported five additional disbursements in 2012 disclosed as operating expenditures for “leasing phones for calling”: in the amount of \$2,106.67 on May 30, July 2, July 26, and August 31, and in the amount of \$2,106.65 on October 1. *See* Forbes for Congress 2012 July Quarterly Report of Receipts and Disbursements at 56; Forbes for Congress 2012 October Quarterly Report of Receipts and Disbursements at 197-98; Forbes for Congress 2012 12-Day Pre-General Report of Receipts and Disbursements at 64. The Committee also disclosed a disbursement of \$106.21 to Innovative Campaign Strategies on November 13, 2012, for “phone usage.” *See* Forbes for Congress 2012 30-Day Post-General Report of Receipts and Disbursements at 72.

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RECOMMENDATIONS

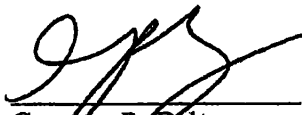
1. Find no reason to believe that Forbes for Congress and Cheryl L. Freauff in her official capacity as treasurer violated the Act or Commission regulations with respect to the allegations in this matter;
2. Find no reason to believe that Republican Party of Virginia, Inc. and Robert S. Fitzsimmonds III in his official capacity as treasurer violated the Act or Commission regulations with respect to the allegations in this matter;
3. Find no reason to believe that various 4th District of Virginia Republican Party Committees violated the Act or Commission regulations with respect to the allegations in this matter;
4. Approve the attached Factual and Legal Analysis and the appropriate letters; and
5. Close the file as to all Respondents.


General Counsel


Date

4/9/14

BY:


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